

UNITED STATES OF AMERICA
THE DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY



NRG Power Marketing Inc.)

Docket No.: EA-220-B

**APPLICATION OF NRG POWER MARKETING INC. FOR
AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO
CANADA**

Pursuant to Section 202(e) of the Federal Power Act ("FPA") 16 U.S.C. Section 824a(e) and 10 C.F.R. Section 205.300 to 205.309, NRG Power Marketing Inc. hereby files its application for blanket authority to transmit electric energy from the United States to Canada.

I. DESCRIPTION OF APPLICANT

The exact legal name of Applicant is NRG Power Marketing Inc. ("NRGPMI"). NRGPMI is a Delaware corporation with a principal place of business in Princeton, New Jersey. NRGPMI is a wholesale buyer and seller of capacity and energy. NRGPMI is a wholly-owned subsidiary of NRG Energy, Inc., an independent power producer engaged in acquiring, developing, operating, and owning interests in independent power production and cogeneration facilities, thermal energy production, transmission facilities, and resource recovery facilities. Presently, NRGPMI is qualified to do business in the states of California, Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Missouri, New Jersey, New York, Rhode Island, Texas, and Wyoming. NRG Energy, Inc. is qualified to do business in the states of California, Connecticut, District of Columbia, Florida, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Dakota, Pennsylvania, Tennessee and Texas.

NRGPMI does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. NRGPMI operates as a marketer ¹

¹ As used herein, the terms "marketer" and "power marketer" mean an entity that buys and sells electric power for its own account. NRGPMI has currently effective power marketing rate schedules approved by the Federal Energy Regulatory Commission ("FERC"). A copy of the Letter Order issued November 12, 1997, wherein NRGPMI received FERC authorization to make sales of electric power at wholesale in interstate commerce at market-based rates under its Rate Schedule FERC No. 1, is attached hereto as Attachment 1. A copy of the Letter Order, issued on March 26, 2004, accepting NRGPMI's updated market power analysis and revised market-based rate tariffs under ER97-4281 et al., is attached hereto as Attachment 2.

and broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services. NRGPMI will purchase the power to be exported from electric utilities and federal power marketing agencies as defined in 16 U.S.C. Section 796 (19, 22) of the FPA. The instant application relates to NRGPMI as a marketer of electric power only.

II. JURISDICTION

No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this application.

III. COMMUNICATIONS

All service and correspondence concerning this application should be sent to:

NRG Power Marketing Inc.
211 Carnegie Center
Princeton, NJ 08540-6213
ATTN: Contract Administration
Phone: 609-524-4543
Fax: 609-524-4540

IV. TECHNICAL DISCUSSION OF PROPOSAL

NRGPMI seeks authority to transmit electric power to Canada as a power marketer. As noted above, NRGPMI does not have its own "system" and on which its exports of power could have a reliability or stability impact. NRGPMI will purchase the power to be exported from electric utilities and federal power marketing agencies, as those terms are defined in Section 3(22) and (10) of the FPA. By definition, such power is surplus to the system of the generator and thus, it will not impair the adequacy of electric power supply within the United States.²

NRGPMI will make all necessary commercial arrangements and will obtain any and all regulatory approvals required to affect any power exports. Such efforts will include (1) scheduling each transaction with the appropriate control area in compliance with all reliability criteria, standards, and guidelines of the Northern American Electric Reliability Council and member regional councils (the "NERC"), which are in effect at the time of export and (2) obtaining all necessary transmission access over the existing facilities listed in Exhibit C.³

²Order No. EA-220-A, issued September 24, 2002, to NRGPMI.

³ The location, voltage, owner and the Presidential Permits under which the relevant border transmission facilities were constructed and are maintained are also set forth in Exhibit C.

As the Department of Energy ("DOE") noted in Order No. EA-220-A, issued to NRG Power Marketing Inc.⁴(referred to hereinafter as "EA- 220-A"), the DOE may utilize the reliability analyses performed in the most recent export authorization proceedings of the above-named transmission systems in order to make the findings required for a grant of export authority to NRGPMI. NRGPMI respectfully requests that the DOE do so and agrees to abide by the export limits contained in the relevant export authorization of any transmission system over which NRGPMI exports electric power to Canada. The controls inherent in any transaction which complies with all NERC requirements and the export limits imposed by the DOE on the above-named transmission systems are sufficient to ensure that exports by NRGPMI would not impede or tend to impede the coordinated use of transmission facilities within the meaning of Section 202(e) of the FPA.

V. PROCEDURES

NRGPMI proposes to comply with procedures similar to those imposed by EA-220-A. From time to time, NRGPMI and third parties may enter into agreements which will involve the export of electric power from the United States to Canada. Prior to commencing (or continuing) the export of electric power under such agreements, NRGPMI will provide the DOE with written evidence that sufficient transmission access to complete the export transaction has been obtained. NRGPMI will make and preserve complete records with respect to the electric power exported to Canada and will provide the DOE with quarterly reports within 30 days following each calendar quarter. These quarterly reports will show the gross amount of kilowatt-hours of electric energy delivered and the consideration received therefor during each month of the previous quarter and the maximum hourly rate of transmission.

⁴ Order No. EA-220-A, issued September 24, 2002, to NRGPMI.

VI. EXHIBITS AND ATTACHMENTS

The following Exhibits and Attachments are attached hereto:

Exhibit A- Agreements - Not applicable at this time

Exhibit B- Legal opinion of NRGPMI's counsel

Exhibit C- Transmission system information (submitted in lieu of maps)

Exhibit D- Non-U.S. Applicant's power of attorney - Not applicable

Exhibit E- Statement of any corporate relationship or existing contract which in any way relates to the control or fixing of electric power rates - Not applicable

Exhibit F- Operating procedures regarding available capacity and energy - Not applicable

Attachment 1- Copy of Letter Order, issued November 12, 1997, accepting NRGPMI's Rate Schedule FERC No. 1

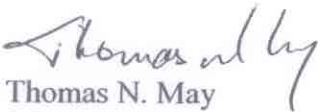
Attachment 2 – Copy of Letter Order, issued on March 26, 2004, accepting NRGPMI's updated market power analysis and revised market-based rate tariffs under ER97-4281 et al.

VII. CONCLUSION

NRGPMI respectfully requests that this application for blanket authority to transmit electric energy to Canada be expeditiously considered and approved on substantially similar terms as were imposed in EA-220-A.

Respectfully submitted,

NRG POWER MARKETING INC.

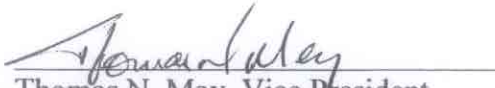

Thomas N. May
Vice President

Dated: May 25, 2005

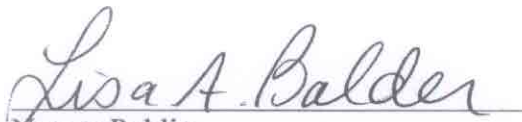
VERIFICATION

STATE OF NEW JERSEY §
§
§
COUNTY OF MERCER §

Thomas N. May, being first duly sworn, states that he is an authorized representative of NRG Power Marketing Inc.; that he is authorized to execute this Verification; that he has read the above and foregoing document and is familiar with the contents thereof; and that all allegations of fact therein contained are true and correct to the best of his knowledge and belief.


Thomas N. May, Vice President
NRG Power Marketing Inc.

SUBSCRIBED AND SWORN to before me on this 25 day of May 2005.


Notary Public

my commission expires: 11/23/2009



EXHIBIT B

OPINION OF COUNSEL

The following opinion, dated May 19, 2005, is given in support of the Application of NRG Power Marketing Inc. for Authorization to Transmit Electric Energy to Canada.

1. I am an attorney at law, authorized to practice law in the State of California, and I am supported by attorneys who are members of the bar of the State of New Jersey.
2. I am counsel to NRG Power Marketing Inc ("NRGPMI").
3. NRGPMI is a corporation, validly existing and in good standing under the laws of the State of Delaware, and is authorized to do business in the State of New Jersey.
4. NRGPMI has full corporate power and authority to engage in exports of electric energy as requested in the application.
5. NRGPMI has complied or is in the process of complying with all Federal and State laws regarding the matters contemplated in the application.



Shiran Kochavi
Counsel for NRG Power Marketing Inc.

EXHIBIT C – Transmission System Information**TRANSMISSION LINES TO BE USED TO EXPORT ENERGY**

| <u>Presidential Permit Holder</u> | <u>Permit No.</u> | <u>Voltage</u> | <u>Location</u> |
|--|--------------------------|-----------------------|-------------------------|
| Basin Electric Coop. | PP-64 | 230kV | Tioga, ND |
| Bosie Cascade | PP-96 | 115kV | International Falls, MN |
| | PP-39 | 6.6kV | International Falls, MN |
| Bonneville Power Admin. | PP-10 | 2-500kV | Blaine, WA |
| | PP-36 | 230kV | Nelway, WA |
| | PP-46 | 230kV | Nelway, WA |
| Eastern Maine Electric Coop. | PP-32 | 69kV | Calais, ME |
| International Transmission Co. | PP-230 | 345-kV | St. Clair, MI |
| | PP-230 | 230-kV | Marysville, MI |
| | PP-230 | 230-kV | Detroit, MI |
| | PP-230 | 345-kV | St. Clair, MI |
| Joint Owners of Highgate Project | PP-82 | 120-kV | Franklin, VT |
| Long Sault, Inc. | PP-24 | 2-115kV | Massena, NY |
| Maine Electric Power Co. | PP-43 | 345kV | Houlton, ME |
| Maine Public Service Co. | PP-12 | 69kV | Limestone, ME |
| | PP-12 | 69kV | Ft. Fairfield, ME |
| | PP-29 | 138kV | Aroostok County, ME |
| | PP-29 | 2-69kV | Madawaska, ME |
| Minnesota Power, Inc. | PP-78 | 115kV | International Falls, MN |
| Minnkota Power Coop, Inc. | PP-61 | 230kV | Roseau County, MN |
| New York Power Authority | PP-30 | 230 kV | Devil's Hole, NY |
| | PP-74 | 2-345kV | Niagara Falls, NY |
| | PP-56 | 765kV | Ft. Covington, NY |
| | PP-25 | 2-230kV | Massena, NY |
| Niagara Mohawk Power Corp. | PP-190 | 230kV | Devil's Hole, NY |
| Northern States Power Co. | PP-45 | 230kV | Red River, ND |
| | PP-63 | 500kV | Roseau County, MN |
| Northern States/Xcel | PP-231 | 230-kV(Not Built) | Rugby, ND |
| Vermont Electric Coop. Co. | PP-66 | 120-kV | Derby Line, VT |
| Vermont Electric Trans. Co. | PP-76 | ±450kV DC | Norton , VT |

81 FERC ¶ 61,185

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONBefore Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, and William L. Massey.

NRG Power Marketing, Inc.) Docket No. ER97-4281-000

ORDER ACCEPTING FOR FILING
PROPOSED MARKET-BASED RATES

(Issued November 12, 1997)

In this order, we accept for filing, without suspension or hearing, the proposed market-based power sales rates filed by NRG Power Marketing, Inc. (NRG Power), an affiliate of Northern States Power Company (NSP).

Background

NRG Power is a power marketing affiliate of Northern States Power Company (NSP). On August 20, 1997, as completed on September 18, 1997, NRG Power filed an application for authorization to sell electric energy and capacity at wholesale at market-based rates. Among other things, NRG Power seeks the same waivers and authorizations as those granted by the Commission to other power marketers with market-based rate authorization. In addition, NRG Power seeks an effective date of September 1, 1997.

Notices of NRG Power's applications were published in the Federal Register, 62 Fed. Reg. 48,833 and 51,848 (1997), with comments, protests, and motions to intervene due on or before October 10, 1997.

A timely motion to intervene raising no substantive issues was filed by Electric Clearinghouse, Inc. (Clearinghouse). No other interventions were filed.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1997), the timely, unopposed motion to intervene of Clearinghouse serves to make it a party to this proceeding.

Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or adequately have mitigated, market power in generation and transmission and cannot

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erect other barriers to entry. In order for an affiliate of a transmission-owning public utility to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing. 1/

As explained below, we find that NRG Power's market-based rate application meets our standards. Accordingly, we will accept the proposed market-based rates for filing, without modification, to become effective on September 1, 1997, as requested.

1. Generation Market Power

NRG Power explains that it does not own, control or operate any electric generation, transmission or distribution facilities. In support of its market-based rate application, NRG Power submitted a generation dominance analysis which indicates that NSP's market share of installed and uncommitted capacity will not exceed levels that the Commission previously has found to be acceptable. 2/ Accordingly, we find that NRG Power meets the Commission's generation market power standard for approval of market-based rates.

2. Transmission Market Power

When an affiliate of a transmission-owning public utility seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access

1/ E.g., Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996), letter order approving settlement, 79 FERC ¶ 61,149 (1997); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); accord Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,060-63 (1994) (Heartland).

2/ See, e.g., Southwestern Public Service Company, 72 FERC ¶ 61,208 at 61,966-67 (1995), reh'g pending; Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,146 (1993) (LG&E).

NRG Power explains that it is affiliated with another power marketer (Cenerprise, Inc.) that has been authorized by the Commission to transact at market-based rates. See Cenergy, Inc., 69 FERC ¶ 61,316 (1994). NRG Power further explains that it has filed an updated market power study in light of the Commission's requirement that an applicant for market-based rate authority file such an update every three years.

transmission tariff on file before granting such authorization. 3/ NSP has filed an open access pro forma compliance transmission tariff in Docket No. OA97-25-000. For this reason, we find that NRG Power meets the Commission's transmission market power standard for approval of market-based rates.

3. Other Barriers to Entry/Reciprocal Dealing

NRG Power states that NSP owns and operates natural gas distribution systems and is affiliated with an interstate natural gas pipeline company. Should any of NRG Power's affiliates deny, delay or require unreasonable terms, conditions or rates for fuel or natural gas services to a potential competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the authority of NRG Power or any of its affiliates to sell power at market-based rates. 4/

With this safeguard, we are satisfied with NRG Power's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

4. Affiliate Abuse

NRG Power commits in its power sales tariff not to sell power to, or purchase power from, a franchised public utility affiliate unless the Commission first approves such a transaction in a separate rate filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994). NRG Power also commits, in an attached code of conduct, that it will abide by the Commission's requirements concerning affiliate transactions, such as the pricing of non-power goods and services, the prohibition against the sharing of non-public market information among affiliates, and independent functioning, as well as those requirements (no-fee, non-exclusivity, must-offer-first) applicable to brokering on behalf of an affiliated public utility.

3/ See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,656-57 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), reh'g pending; accord Southern Company Services, Inc., et al., 71 FERC ¶ 61,392 at 62,536 (1995); Heartland, 68 FERC at 62,059-60..

4/ See, e.g., LG&E, 62 FERC at 61,148.

With these protective safeguards, we are satisfied with NRG Power's explanation that there are no affiliate abuse considerations of concern here.

Waivers, Authorizations and Reporting Requirements

NRG Power has requested the following authorizations and waivers of various Commission regulations consistent with those granted other power marketers: (1) waiver of the filing requirements of Subparts B and C of Part 35 of the Commission's regulations, except Sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101 and 141; (3) abbreviated filings with respect to interlocking directorates under Part 45; and (4) blanket authorization for issuances of securities or assumptions of liabilities pursuant to FPA section 204, 16 U.S.C. § 824c (1994). We will grant the requested authorizations and waivers to the extent granted to other power marketers.

Consistent with previous Commission decisions, we will require NRG Power to file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter. This requirement is necessary to ensure that contracts relating to rates and services are on file as required by section 205(c) of the FPA, 16 U.S.C. § 824d(c) (1994), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power. 5/

Additionally, we will direct NRG Power to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area. 6/ Alternatively, NRG Power may elect to report such changes in conjunction with the updated market analysis it will be required to file every three years. 7/

5/ See, e.g., Heartland, 68 FERC at 62,065-66.

6/ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 at 61,695 (1994), order on reh'g, 72 FERC ¶ 61,082 (1995); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,134, clarified, 68 FERC ¶ 61,324 (1994).

7/ We reserve the right to require such an analysis at any
(continued...)

Effective Date

Finally, NRG Power requests waiver of the 60-day prior notice and filing requirement. We find that good cause exists to grant waiver and to allow the proposed market-based power sales tariff to become effective on September 1, 1997, as requested. g/

The Commission orders:

(A) NRG Power's market-based power sales tariff is hereby accepted for filing, without suspension or hearing, to become effective on September 1, 1997, as requested.

(B) NRG Power's request for waiver of Parts 41, 101 and 141 of the Commission's regulations is hereby granted.

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NRG Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (1997).

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, NRG Power is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of NRG Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) Until further order of the Commission, the full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving NRG Power. Any such person instead shall file a sworn application providing the following information:

7/ (...continued)
time.

8/ See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,339, reh'g denied, 61 FERC ¶ 61,089 (1992).

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and positions held by that person.

(F) The Commission reserves the right to modify this order to require the further showing that neither public nor private interests will be adversely affected by continued Commission approval of NRG Power's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(G) NRG Power's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(H) NRG Power is hereby directed to conform to the filing and reporting requirements specified in this order. The first quarterly report of transactions undertaken by NRG Power under its market-based power sales tariff will be due within 30 days of the calendar quarter ending December 31, 1997.

(I) NRG Power is hereby directed to file an updated market analysis within three years of the date of this order, and every three years thereafter.

(J) NRG Power is hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, NRG Power may elect to report any such changes every three years with the updated market analysis filed pursuant to Ordering Paragraph (I) above. NRG Power shall notify the Commission of which option it elects in its first quarterly report filed pursuant to Ordering Paragraph (H) above.

(K) NRG Power is hereby informed of the following rate schedule designations:

NRG Power Marketing, Inc.

Rate Schedule FERC No. 1

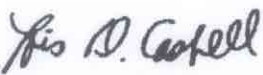
Market-Based Rate Schedule

Supplement No. 1 to Rate
Schedule FERC No. 1.

Code of Conduct

By the Commission.

(S E A L)


Lois D. Cashell,
Secretary.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

In Reply Refer to:
March 26, 2004

| | |
|---------------------------------|--------------------------|
| NRG Power Marketing Inc. | Docket No. ER97-4281-013 |
| Arthur Kill Power LLC | Docket No. ER99-2161-004 |
| Astoria Gas Turbines Power LLC | Docket No. ER99-3000-002 |
| Bayou Cove Peaking Power LLC | Docket No. ER02-1572-001 |
| Big Cajun I Peaking Power LLC | Docket No. ER02-1571-001 |
| Conemaugh Power LLC | Docket No. ER00-2810-002 |
| Connecticut Jet Power LLC | Docket No. ER99-4359-001 |
| Devon Power LLC | Docket No. ER99-4358-001 |
| Dunkirk Power LLC | Docket No. ER99-2168-004 |
| Huntley Power LLC | Docket No. ER99-2162-004 |
| Indian River Power LLC | Docket No. ER00-2807-002 |
| Keystone Power LLC | Docket No. ER00-2809-002 |
| Louisiana Generating LLC | Docket No. ER00-1259-002 |
| LSP-Energy Limited Partnership | Docket No. ER98-2259-003 |
| LSP Kendall Energy LLC | Docket No. ER99-2602-003 |
| LSP-Nelson Energy LLC | Docket No. ER00-2448-002 |
| Meriden Gas Turbines LLC | Docket No. ER02-566-001 |
| Middletown Power LLC | Docket No. ER99-4355-001 |
| Montville Power LLC | Docket No. ER99-4356-001 |
| NEO California Power LLC | Docket No. ER01-1558-001 |
| NM Colton Genco LLC | Docket No. ER03-320-004 |
| NM Mid Valley Genco LLC | Docket No. ER03-321-004 |
| NM Milliken Genco LLC | Docket No. ER03-322-004 |
| Norwalk Power LLC | Docket No. ER99-4357-001 |
| NRG Ashtabula Generating LLC | Docket No. ER02-1055-001 |
| NRG Audrian Generating LLC | Docket No. ER01-2969-002 |
| NRG Energy Center Dover LLC | Docket No. ER00-3160-002 |
| NEO Chester-Gen LLC | Docket No. ER00-3160-002 |
| NEO Freehold-Gen LLC | Docket No. ER00-3160-002 |
| NEO Toledo-Gen LLC | Docket No. ER00-3160-002 |
| NRG Energy Center Paxton LLC | Docket No. ER00-2313-002 |
| NRG Iliion LP | Docket No. ER02-1395-001 |
| NRG Lake Shore Generating LLC | Docket No. ER02-1056-001 |
| NRG Marketing Services LLC | Docket No. ER03-955-003 |
| NRG McClain LLC | Docket No. ER02-68-002 |
| NRG New Jersey Energy Sales LLC | Docket No. ER02-2032-001 |

Docket No. ER97-4281-013, et al.

2

NRG Northern Ohio Generating LLC

Docket No. ER02-1054-001

Docket No. ER97-4281-013, et al.

3

NRG Rockford II LLC
NRG Rockford LLC
NRG Sterlington Power LLC
Oswego Harbor Power LLC
Somerset Power LLC
Vienna Power LLC

Docket No. ER02-1412-001
Docket No. ER02-1396-001
Docket No. ER00-3718-002
Docket No. ER99-3637-002
Docket No. ER99-1712-004
Docket No. ER00-2808-002

Donna L. Stephenson
Senior Counsel Regulatory
NRG Energy, Inc.
901 Marquette Avenue
Suite 2300
Minneapolis, MN 55402-5369

Reference: Updated Market Power Review and Revised Market-Based Rate Tariffs

Ladies and Gentlemen:

Pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - South, under 18 C.F.R. 375.307, your updated market power analysis and revised market-based rate tariffs, filed in the referenced dockets, are accepted for filing as designated. Your next updated market power review is due within three years of the date of this order.

On December 8, 2003, as amended December 17, 2003, and supplemented on March 17, 2004, you filed an updated market power review on behalf of NRG Power Marketing and forty-two affiliates (together "NRG Companies"). You also submitted revised market-based rate tariffs that eliminate references to Xcel Energy, Inc., provide for the reassignment of transmission capacity of a shorter duration than that which was originally purchased, and add the Commission's Market Behavior Rules. In addition, you unify the terms and conditions of all the NRG Companies market-based rate tariffs to eliminate discrepancies and standardize the tariffs.

In your March 17, 2004 supplement, you state your understanding that FirstEnergy has completed the divestiture of its stake in NRG Companies. Based on this understanding, your submittal is accepted for filing, effective December 17, 2003.

Docket No. ER97-4281-013, et al.

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Your filings were noticed on December 12, 2003 and January 7, 2004, with comments, protests or interventions due on or before December 29, 2003 and January 20, 2004. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. & 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

In its order announcing the Supply Margin Assessment (SMA) screen in AEP Power Marketing, Inc., et al., 97 FERC & 61,219 (2001), the Commission found that all sales, including bilateral sales, into an independent system operator (ISO) or regional transmission organization (RTO) market with Commission-approved market monitoring and mitigation will be exempt from the SMA screen and, instead, will be governed by the specific thresholds and mitigation provisions approved for the particular markets. Because the Applicant will sell into the California ISO, New England ISO, New York ISO and PJM, and these ISO's have the Commission-approved market monitoring and mitigation in place,¹ the Applicant is exempt from the SMA for its sales into these markets and instead is governed by the specific thresholds and mitigation approved in those markets. In addition, the Commission has reviewed the submittal using the AMERN, Commonwealth Edison, Entergy, Oklahoma Gas & Electric, Nevada Power Company, Michigan Electric Coordinated Systems, TVA and Virginia Power control area markets, respectively. The applicants pass the SMA in all relevant markets.

In addition, your submittal satisfies the Commission's requirements for market-based rates regarding transmission market power, other barriers to entry and affiliate abuse.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by

¹See, e.g., New England Power Pool, 85 FERC & 61,379 (1998), reh'g denied, 95 FERC & 61,074 (2001); Atlantic City Electric Company, et al., 86 FERC & 61,248, clarified, 86 FERC & 61,310 (1999); Central Hudson Gas & Electric Corporation, et al., 86 FERC & 61,062, order on reh'g, 88 FERC & 61,138 (1999); and AES Redondo Beach, LLC, et al., 85 FERC & 61,123 (1998), order on reh'g, 87 FERC & 61,208 (1999).

Docket No. ER97-4281-013, et al.

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the Commission in any proceeding now pending or hereafter instituted by or against your company.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. 385.713.

Sincerely,

Steve P. Rodgers, Director
Division of Tariffs and Market
Development - South